

**UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF MISSISSIPPI
SOUTHERN DIVISION**

**PREMIERE ENTERTAINMENT BILOXI, LLC
d/b/a Hard Rock Hotel & Casino Biloxi, a Delaware
Limited Liability Company**

PLAINTIFF

**U.S. BANK NATIONAL ASSOCIATION, a national
banking association, as Trustee under Series A and
Series B 10 3/4% First Mortgage Notes Due 2012
Indenture dated January 23, 2004**

PLAINTIFF INTERVENOR

V.

CIVIL ACTION NO. 1:06CV12 LTS-RJW

**JAMES RIVER INSURANCE COMPANY, an
Ohio Corporation**

DEFENDANT

MEMORANDUM OPINION AND ORDER

The Court has before it Defendant James River Insurance Company's (James River) motions for review of the ruling of the United States Magistrate granting leave to Plaintiff Premiere Entertainment Biloxi, LLC, (Premier) to file a second amended complaint. The second amended complaint contains a demand for jury trial that did not appear in the original complaint. James River has also filed a motion to strike the jury demand in the second amended complaint. James River contends that Premiere has waived its right to trial by jury by its failure to make a jury demand in its original complaint.

My review of the docket in this case indicates that issues have not yet been joined. James River has filed three motions to dismiss, one addressed to the original complaint, one addressed to the first amended complaint, and a third addressed to the second amended complaint, but James River has not yet filed an answer to the original or to either of the amended complaints.

The time within which a party may exercise its right to trial by jury is set out in F.R.Civ.P. 38. That rule provides that a jury demand must be made within ten days of the filing of the last pleading addressed to the issue for which a jury trial is sought. The last pleading is usually the answer to the complaint, in the absence of counterclaims and cross-claims. *Texas General Petroleum Corp. v. Leyh*, 52 F.3d 1330, 1339 (5th Cir. 1995) (citing *McCarthy v. Bronson*, 906 F.2d 835, 840 (2d Cir.1990), *aff'd* 500 U.S. 136 (1991)).

Since James River has not yet filed its answer, I am of the opinion that Premiere's jury demand is timely. I am also of the opinion that the United States Magistrate Judge made the proper ruling concerning this issue.

Accordingly, I will deny James River's motion to review the ruling of the United States Magistrate and I will also deny James River's motion to strike Premiere's jury demand.

Accordingly, it is

ORDERED

That the motion of James River Insurance Company for review of the ruling of the United States Magistrate [30] is hereby **DENIED**; and

That the motion of James River Insurance Company to strike the jury demand of Plaintiff Premiere Entertainment Biloxi, LLC, [31] is hereby **DENIED**.

SO ORDERED this 28th day of July, 2006.

s/ L. T. Senter, Jr.

L. T. Senter, Jr.
Senior Judge